



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 25, 1994

Mr. G. Mike Davis  
State Fire Marshal  
Texas Commission on Fire Protection  
P.O. Box 2286  
Austin, Texas 78768-2286

OR94-690

Dear Mr. Davis:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 28823.

The Texas Commission on Fire Protection (the "commission") has received a request for information relating to a certain house fire. Specifically, the requestor seeks "a copy of your report or reports, your investigative file, and any other records in your possession pertaining to the . . . fire." You advise us that the commission has released some of the requested information, including portions of a synopsis investigation report and an incident report. You seek to withhold the remaining information from required public disclosure under sections 552.101 and 552.108 of the Government Code.

Section 552.108 excepts from required public disclosure

(a) [a] record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . .  
[and]

(b) [a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . .

Gov't Code § 552.108. When applying section 552.108, this office distinguishes between information relating to cases that are still under active investigation and other information. Open Records Decision No. 611 (1992) at 2. In cases that are still under

active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. *See generally Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Otherwise, when the "law enforcement" exception is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how its release would unduly interfere with law enforcement. Open Records Decision No. 434 (1986) at 3 (citing *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). Whether information falls within the section 552.108 exception must be determined on a case-by-case basis. *Id.* at 2.

You advise us that the requested information relates to a pending arson investigation. We have examined the documents submitted to us for review and conclude that they may be withheld under section 552.108 of the Government Code. *See* Open Records Decision No. 134 (1976) (concluding that section 552.108 excepts portions of State Fire Marshal's arson investigation). Although the house fire occurred in 1991, the documents themselves confirm that the investigation of the case is ongoing. As we resolve this matter under section 552.108, we need not address the applicability of section 552.101 at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll  
Assistant Attorney General  
Open Government Section

MAR/GCK/rho

Enclosures: Submitted documents

Ref.: ID# 28823

cc: Ms. Winonia Griffin  
Holman, Arnold & Cranford, L.L.P.  
P.O. Box 5367  
Texarkana, Texas 75505-5367  
(w/o enclosures)